

# How the Romanian government wants to "improve" the Constitution

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As we know, Romania faced a major political crisis last year. Ponta's centre-left government, based on a two-thirds majority coalition ([USL](#)), attempted to impeach President Băsescu by means of a referendum and obtain control of all state institutions.

The attempt failed. The quorum rule required 50% plus one of all registered voters to be present at polls. Prior to the referendum, the government tried to change the rules of the game to its advantage, proposing a law allowing for a referendum to be validated by the majority of those among the electorate who actually chose to vote. But international pressure thwarted this move. As only 46% of the electorate turned up at the referendum (of which over 87% voted in favour of the impeachment of Băsescu!), the Constitutional Court declared the referendum invalid, and Băsescu returned to power, after a brief interregnum by Ponta's ally Crin Antonescu ([PNL](#)).

Many expected a life-and-death struggle to follow between Ponta and Băsescu, with nasty consequences for Romanian politics. But in a surprising turn of events, towards the end of 2012 the Prime Minister and the President agreed upon a sort of *modus vivendi*. This was largely due to international pressure, Romania's dependence on EU funds and its desire to accede to the Schengen area. Ponta and Băsescu signed a document determining their precise relation and stressing their commitment to the principles of democracy, the independence of the judiciary and Romania's EU membership.

The truce was not welcomed by some of Ponta's allies, especially Antonescu and [Dan Voiculescu](#) (PC), a allegedly former Securitate man turned billionaire, 'conservative' politician and media mogul, who is facing several pending corruption trials. Simultaneously with Băsescu's crackdown on corruption, during the 2012 crisis Voiculescu's TV channels (such as Antena 3) were aggressively attacking the President, the Constitutional Court and the European institutions, providing unabashed support for USL.

Very soon after the failure of the referendum, Voiculescu suggested that Băsescu ought to be impeached again. But given Ponta's truce with Băsescu, this proposal was not greeted with much enthusiasm within USL. In fact, the coalition is now much less unified than in 2012. We have the pragmatic opportunism of Ponta, whose Social-Democratic Party is strong enough to seek other allies, versus the interests of those like Antonescu and Voiculescu, whose shadowy ventures are threatened by Băsescu's reform of the judiciary. The nomination of Laura-Codruta Kövesi as [anti-corruption prosecutor](#), following an agreement between Ponta and Băsescu, and the virulent reactions to this on Voiculescu's TV channels, remind us that the battle for the independence of the judiciary is not over.

Following the referendum debacle in 2012, USL has decided to revise the constitution. This would not necessarily have to be a bad thing. Romania also received external recommendations to even out inherent contradictions in the constitution, e.g. from the [Venice Commission](#). But USL appointed none other than Crin Antonescu to head the joint [Parliamentary Committee](#) for the revision of the Constitution, i.e. precisely the man who had a personal stake in the success of the referendum, given his presidential ambitions.

Despite the [recommendations](#) of the European Commission that any constitutional changes be made in a transparent way, the work of this Committee was set to take place *in camera*. An informal [Constitutional Forum](#) has also been established. Since mid-March, it has been working towards proposing major revisions to the constitution in relative isolation from the wider public whose views it was supposed to channel into the formal constitutional revision process. Although the Forum tries to brand itself as a '[partnership](#) between civil society and the parliament', there has been very little consultation of the general public. This is hardly indicative of good things to come.

Should we be surprised that one of the main items on the agenda was the law on referenda? The [report](#) of the Forum was published on 29 May, and it recommends that the law should be changed, as it is very unlikely that the required quorum of 50% plus one will be attained to validate the changes brought about by the current revision. This was also confirmed by [recent opinion polls](#), so USL took the matter into its own hands. It pushed through Parliament a proposal for the participation quorum to be lowered to 30%, with a positive vote of at least 25% required to validate a referendum.

And so the referendum law was [changed](#) on 29 May. Since the scope of the law is broad, applying to the impeachment of the president, the modification of the constitution, and even local politics, it will be now possible, by means of a referendum, for a quarter of the electorate to take major political decisions.

This may undermine any element of majority-based direct democracy in Romania. Some parliamentarians want to get rid of the referendum law altogether, although Art. 2 §1 of the Constitution defines the sovereignty of the people in terms of the availability of free elections *and* referenda. Absurd situations can now emerge in the land of Dada: a president elected by a simple majority, through direct vote, may be impeached by 25% of the electorate. Also, Romania's new constitution was adopted in 1991, then subsequently revised in 2003, with a 50% plus one majority. Will it now be subject to changes by a minority of voters?

It is true that the [Venice Commission](#) has recommended the abolition of any quorums for referenda in Europe (the turn-out quorum might lead to appeals to boycott, and the approval quorum can cause political deadlock when a proposal fails to meet the threshold). However, the Venice Commission clearly [distinguishes](#) between legislative and constitutional referenda. The purpose of its recommendations is obviously to promote wider participation in public consultations regarding proposed new laws. But things are quite different when citizens are called to vote on constitutional revisions and institutional design. In any event, the modification of the referendum law will now be appealed against at the Constitutional Court in Bucharest.

The Constitutional Forum recommends the modification of other points as well, e.g. concerning the impeachment of the president, the Constitutional Court, the limitation of political migration of parliamentarians (a serious problem when, as in Romania, party ideologies are relatively fluid), and the very structure of the Parliament.

These amendments have been severely criticised by constitutional lawyer [Vlad Perju](#) (Boston College), who argues that they 'increase the risk of constitutional imbalance'. For instance, the Forum recommends that the president be impeached for 'repeatedly behaving in a manner incompatible with his role as determined by the Constitution, thus modifying his mediating function or provoking or sustaining inter-institutional conflicts' (p. 118 [here](#)). But as Perju [argues](#), this vague formulation undermines the separation of powers: it 'transforms the impeachment of the president from a judicial into a political sanction, intervening without any logic or reason into the electoral cycle. This will contribute to the perpetuation of institutional tensions and political polarization'.

Some proposals adopted by the committee headed by Antonescu look *ad hoc*, e.g. the provision [compelling](#) every citizen to appear before a parliamentary committee if summoned by the Parliament. The rationale behind this proposal is worrying, however. It appears to be aimed at intimidating magistrates, by calling them to appear before a sort of people's tribunal. For some [commentators](#), Voiculescu is driving this amendment. Asked about the prosecution of a director of his TV channels, Voiculescu replied: 'I am taking care of Romania. If we have judges and prosecutors who do such things... Today him, tomorrow you... Soon it will be any of us... We need to tidy up these things. And we will.'

Our alarm bells should be ringing when we hear this. No EU member state is some oligarch's living room, which he is entitled to 'tidy up' according to his personal interests. We need to keep a close watch on Romania's attempts to 'improve' its constitution.

